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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,785	10/07/2003	William H. Moss	M0448-00013	6713

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EXAMINER

SAYALA, CHHAYA D

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/681,785

Applicant(s)

MOSS, WILLIAM H.

Examiner

C. SAYALA

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 8, 16-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant claims (claims 8, 16 and 20) a recycled, dried fed pellet. It is not clear what "recycled" means. Recycled from where in this process? There is no information in the description where the recycled pellet forms and what it is recycled from and where the recycling occurs, i.e. at which point in the process. Is the recycled product from another process? There is no information or step where this recycling occurs or what the product is recycled from.

In claims 17-19, applicant claims "blended in another location". This lacks antecedent basis. What are the pellets blended into? This is unclear. No details are available so that a proper search could be conducted.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 1761

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaFollette (US Patent 5976594) in view of Miller (US Patent 5543058), Moffett (US Patent 6132625), Braden et al (US Patent 5433863) and further in view of Kemp et al. (US Patent 5908634), Markham et al. (US Patent 4173532), Keoteklian (US Patent 4173532) and Willgoos (US Patent 5958233) or ES 2152810.

La Follette teaches a process for producing feed from food waste. Col 2, lines 37+ describes the first step of grinding the food waste, blending the ground food waste to produce a homogeneous mixture, adding dry material such as dry feed that includes rice hulls, soyhulls, corn and grain sorghum, and then extruding the dry feed and the food waste mixture into pellets and drying them. See col. 3, lines 1-55. Note that the patent teaches that the feed pellets are stored in a storage bin and then it is loaded onto a truck, a bulk loader or to a bagger for distribution. The reference does not teach that the manufacturing location and the blending location are separated by a short distance. However, to house livestock closer to the manufacturing plant is a matter of choice and in no way distinguishes a process "for producing animal feed from food waste" for patentability purposes. Recycling of pellets is not taught nor are they taught as the dry carrier. But, for economical reasons, to recycle pellets that are unused and to return them to the process and take them through the process steps again as the dry carrier for the wet food waste, would have been an obvious expedient. The patent does not teach adding flocculants, lime or the pH conditions.

Art Unit: 1761

Miller teaches using synthetic polymers as coagulants and/or flocculants is useful for collecting proteinaceous materials, fats and oils from wastewaters of food processing plants to be processed as animal feed. See abstract and col. 1, col. 2, lines 1-30.

Polymers suggested: polyamines, polyacrylamides (example 15), and polydadmac (examples 3-8). See col. 4, line 45 to col. 5, line 5 that teaches the polymers, amounts to be used, type and amount based on the amount of protein and flocculant size desired.

At col. 5, line 20 to col. 6, line 10, Moffett teaches all the polymers, both cationic and anionic, that are used to separate proteins from waste streams from food processing operations. See also col. 7, lines 49-61.

Braden et al. also teach using polymers as flocculants for oil recovery from wastewaters of food processing. Note the instantly claimed polymers among those disclosed by the reference at col. 5, lines 10-32 and col. 6, line 58.

Thus it was known in the art at the time the invention was made to use flocculants/coagulants and precipitating agents in the reclamation of proteins and fat from wastewaters of food processing, as shown by these above patents to Miller, Moffett and Braden et al. who all use the synthetic polymers claimed herein.

In this regard see the patent to Keoteklian at col. 3, lines 55+, which discloses that it was routine to add such agents to separate out solid proteins and fats from the liquids, with the simultaneous manipulation of the pH depending on the treatment media. See the abstract. At col. 5, the patent teaches at line 68. and col. 6, that to a *bakery waste effluent*, lime water was added to increase the pH and cationic polymers

Art Unit: 1761

were added as flocculating agents. Markham et al also teach the addition of lime to their process of coagulating fats and proteins from food processing wastewaters. See col. 3, wherein the patentees state that the pH must be manipulated depending on the amount of the fat and the protein and at col. 4, lines 10+, wherein they state that the addition of hydrated lime provides a stronger, larger and more abundant floc.

Kemp et al. teach the importance of pH conditions in animal feeds. They teach that the addition of lime provides a source of calcium, increases moisture absorbency and maintains a pH in the alkaline range so that the health of the animal is promoted from a nutritional viewpoint, thus enabling the avoidance of feeding the animal drugs, other alkaline minerals and higher fiber intakes, as well as maintaining a more balanced rumen pH level. See col. 6, lines 30-53. Thus while Kemp et al describe the merits of adding lime, Markham and Keoteklian address the importance of maintaining a basic pH by adding lime and state the benefits of such.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the synthetic polymers that are shown to be already in use in the same process of recovering proteins and fats from food processing wastewaters by prior art of Miller, Moffett and Braden et al as discussed above, and incorporate such in LaFollette. To add hydrated lime for reasons given by Markham et al and Keoteklian when using flocculants, in addition to the benefits shown by Kemp et al would also have been obvious. It was already known in the art that such a manipulation of pH after or during the flocculation or coagulation of the fats and proteins in the wastewater enable the flocculants to withdraw the required material from the wastewater mixture. After

Art Unit: 1761

recovery of the flocculants Markham et al teach the re-circulation of effluents into their process; see col. 8. Recycling effluents is also shown by Willgohs and the ES patent, both drawn to treating wastes to produce animal feed. Willgohs teaches dewatering aqueous-solids by-product streams from alcohol production from grains and plants, to produce useful solids for feeds. The primary device used for dewatering is said to be a centrifuge or a screw-press (abstract). To incorporate such recovery and reuse in the LaFollette process would require no more than ordinary skill based on fact that such an inclusion would have been efficient and economical. Similarly, while LaFollette teaches grinding the wastes, to choose the appropriate size of the ground waste particle would be within the ambit of the artisan. Thus based on the references applied herein, all the limitations are rendered obvious absent any evidence to the contrary, all patents being drawn to processing food wastes for animal feeds.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Art Unit: 1761

3. Claims 1-6, 9-14 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-6, 8-13 of prior U.S. Patent No. 6635297. This is a double patenting rejection.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 7-8, 15-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 6635297 in view of LaFollette (US Patent 5976594).

The claims of the patent differ by not teaching that the manufacturing location and the blending location are separated by a short distance. However, to house livestock closer to the manufacturing plant is a matter of choice and in no way distinguishes a process "for producing animal feed from food waste" for patentability purposes. Recycling of pellets is not taught nor are they taught as the dry carrier. But, for economical reasons, to recycle pellets that are unused and to return them to the process and take them through the process steps again as the dry carrier for the wet

Art Unit: 1761

food waste, would have been an obvious expedient. Note that the patent teaches that the feed pellets are stored in a storage bin and then it is loaded onto a truck, a bulk loader or to a bagger for distribution.

5. Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No. 10/305617. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims encompass a similar inventive concept and vary in scope only.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

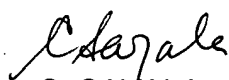
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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